

E-015/M-91-349 ORDER CONTINUING COLLECTION OF POST SHIPMENT MINE
CLOSING COSTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Minnesota
Power's Post-Shipment Mine
Closing Costs

ISSUE DATE: August 27, 1991

DOCKET NO. E-015/M-91-349

ORDER CONTINUING COLLECTION OF
POST SHIPMENT MINE CLOSING COSTS

PROCEDURAL HISTORY

On March 1, 1988, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in Minnesota Power & Light Company's (MP) general rate case, Docket No. E-015/GR-87-223. In this Order, the Commission authorized MP to begin funding a sinking fund to meet the cost of closing of the Big Sky mine in Montana projected to begin in 1994. To build that fund, the Commission authorized MP to include \$640,000 as test year expense in its base rate. In addition, the Commission ordered MP to refile an updated proposal for the treatment of the mine closing costs within two years of the Order.

On May 16, 1988, the Commission issued its ORDER AFTER RECONSIDERATION AND REHEARING in this matter which reset the due date for MP's updated proposal for the treatment of post shipment mine closing costs for May 16, 1990.

On April 18, 1990, MP filed a request to defer its compliance filing, indicating that recently commenced arbitration proceedings with Peabody Coal Company (the owner of the Big Sky mine) would provide information that should be incorporated into its report to the Commission.

On May 18, 1990, the Commission issued its ORDER DEFERRING COMPLIANCE FILING AND REQUIRING STATUS REPORT which allowed MP to defer filing its updated proposal for treating mine closing costs until 45 days after the completion of arbitration proceedings.

On March 15, 1991, the American Arbitration Association issued the Opinion and Award of Arbitrator Robert J. Sheran regarding the MP/Peabody dispute.

On April 30, 1991, MP filed with the Commission its Proposal for Treatment of Post-Shipment Mine Closing Costs (Proposal) and on May 6, 1991, MP filed certain revised pages of its Proposal. MP served copies of its filings on the service list in its last rate case, Docket No. E-015/GR-87-223.

On May 16, 1991, the Commission sent a notice to this service list requesting that comments on MP's filings be filed no later than July 1, 1991.

On July 1, 1991, the Minnesota Department of Public Service (the Department) filed comments regarding MP's Proposal.

On July 2, 1991, Eveleth Expansion Company, Eveleth Taconite Company, Hibbing Taconite Joint Venture, Inland Steel Mining Company, National Steel Pellet Company, and USX Corporation (the Taconites) filed comments regarding MP's Proposal.

On August 6, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

During its 1988 rate case, MP estimated that the costs of mine closing would be approximately \$9.4 million and proposed a sinking fund intended to fund the total cost by 1993. Specifically, MP sought an increased test year fuel expense of \$1,496,165 for this purpose and requested authority to change that rate of recovery through the automatic fuel adjustment clause as closing costs increased or decreased.

Uncertainties Cloud Closing Cost Issue

In its 1988 rate case Order, the Commission noted:

The uncertainties surrounding this issue include such questions as: Will MP terminate the contract? Will pit B actually be opened? Should a portion of the estimated costs be assessed to others that have purchased coal from this mine? What happens to the excess funds if the sinking fund is overfunded? Why fund the entire amount by 1993 when the final payments may not be made until 2000 or beyond? How will the tax deferrals be treated? Is it appropriate to allow MP to collect the total amount of closing costs beginning now, when the costs have been known to some extent beginning since 1977? Is it appropriate to include these costs in the fuel adjustment clause as proposed by MP? Is an internal sinking fund appropriate? In the Matter of the Petition of Minnesota Power & Light Company, d/b/a Minnesota Power, for Authority to Change its Schedule of Rates for Retail Electric Service in the State of Minnesota, Docket No. E-015/GR-87-223, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (March 1, 1988), at page 49.

Intervening Events Clarify Some Issues

In the two year period following authorization of the sinking fund the major clarifying event was the March 15, 1991 decision in the MP/Peabody arbitration dispute. The Arbitrator decided what types of costs MP would be liable for and generally when MP would become liable for those costs, i.e not until Peabody incurs them following the closing of the mine. However, the amount of mine closing costs will not be known for several years when they are actually incurred. Likewise, because MP's share of those costs depends on the percentage of coal it takes from the mine prior to its closing, its share cannot be calculated until the mine actually closes.

Based on the Arbitrator's findings, however, MP was able to estimate in its compliance filing that its total liability for Big Sky mine-closing costs between 1994 and 2005 will be \$14.9 million, of which \$13.1 million would be attributable to MP's retail operations.¹ MP projected that collections at the currently authorized rate (\$640,000 annually) would provide enough funds to cover the estimated retail liability by July 2002. Regarding the timing of such obligations, MP projected that approximately one third of the expenses related to this liability would be incurred in 1994 with two thirds spread out through approximately 2005.

MP proposed that the Commission continue the **current collection rate (\$640,000)** and the **current mechanism of collection**, i.e. through base electric rates, subject to later modification by the Commission as circumstances would warrant.

Commission Options

In conducting its two year review of MP's mine closing costs as indicated in its 1988 Order, the Commission can continue the status quo or consider any of several options including the following:

1. The Commission could decide MP should not be authorized to collect mine closing costs through its base rates beyond December 31, 1993, the date that MP's contract with Peabody terminates.

¹ This figure does not include severance taxes on MP's payments for mine closing costs, federal royalties, Black Lung taxes and other third party costs that have not as yet been assessed against MP. MP indicates that it will contest any attempt to apply these taxes and royalties to it. MP states that these taxes and royalties could increase its liability by more than 40%.

2. The Commission could decide that the rate at which MP collects (\$640,000 annually) should be increased to allow it to collect the full amount of its projected closing costs prior to December 31, 1993, the date that MP's contract with Peabody terminates.
3. The Commission could decide that MP should be allowed to collect the full amount of its closing costs through its base rates augmented by the fuel clause adjustment.

Commission Action

Having reviewed MP's Proposal and the parties' comments, the Commission finds that no change in the current collection rate or collection mechanism is warranted at this time. Uncertainties regarding the amount and timing of the costs for which MP will be responsible continue.² In the meantime, all parties, including the Department and the Taconites, agree that the current collection rate and method are reasonable.

In these circumstances, the Commission finds no reason to seek a change in the treatment of MP's mine closing costs. The rate of collection and the collection mechanism authorized in the 1988 Order are fair and reasonable and will continue until further Order of the Commission.

Implications of This Order

The Commission recognizes that at the currently authorized rate (\$640,000 annually) enough funds to cover MP's estimated retail liability would not be recovered until approximately July 2002. In choosing not to place an end date beyond which MP is not permitted to collect for costs at this rate, MP will be authorized to collect at this rate beyond the December 31, 1993 termination of the Big Sky contract until all such costs are recovered unless, of course, that authority is withdrawn or altered by an intervening rate case Order. The Commission may not guarantee in this Order that MP will continue to be authorized to collect these costs at the currently authorized

² For example, MP cites three factors that leave MP's mine closing expenses unsettled at this time. First, if Peabody sells Big Sky coal to another buyer after MP ends its contract in 1993, MP's percentage of the closing costs for the Big Sky mine would decrease because the new buyer would become liable for a share of this liability. Second, if imposed, Montana severance taxes and other government charges could increase MP's liability by more than 40%. Third, MP and Peabody are currently discussing a possible coal contract buyout or contract renegotiation. The outcome of these discussions could have a significant impact upon mine closing costs.

rate until the full \$13.9 million is collected in July 2002. Authority under this Order to collect at the current rate only continues until MP's next rate case, in which the Commission is required by law to examine fuel costs afresh and determine, consistent with applicable law, what costs will be authorized for collection through base rates.

Second, as in its 1988 Order, the Commission does not rule out the possibility that it might at some future point authorize collection of costs through the fuel adjustment clause in addition to the currently approved rate base collection method. The Commission will review any request for fuel clause treatment of any such costs on a case by case basis and according to the Commission's fuel clause rules.

ORDER

1. The filing made by Minnesota Power on April 30, 1991 is accepted as in compliance with Ordering Paragraph 9 of the Commission's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in Docket No. E-015/GR-87-223 (March 1, 1988).
2. Minnesota Power's authority to collect funds towards defraying anticipated post shipment mine closing costs as originally authorized in the Commission's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in Docket No. E-015/GR-87-223 (March 1, 1988) is not affected by this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)